

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE**

FUSION ELITE ALL STARS, et al., Plaintiffs, v. VARSITY BRANDS, LLC, et al., Defendants.	Case No. 2:20-cv-02600-SHL-tmp JURY TRIAL DEMANDED
JONES, et al., Plaintiffs, v. BAIN CAPITAL PRIVATE EQUITY, et al., Defendants.	Case No. 2:20-cv-02892-SHL-tmp JURY TRIAL DEMANDED

NOTICE OF SUPPLEMENT TO JOINT PLAINTIFFS' MOTION TO MODIFY EXPERT DISCOVERY DEADLINES

Plaintiffs submit as supplemental support for their Motion to Modify the Expert Discovery Deadlines (Case 2:20-cv-02600-SHL-tmp, ECF 251) (the “Joint Extension Motion”) Chief Magistrate Judge Pham’s Order compelling non-party Rebel Athletic Inc. (“Rebel”) to produce transactional apparel data in 28 days, on May 26, 2022 (attached as Exhibit A). (Case 2:20-cv-02600-SHL-tmp, ECF 252 at 20).¹ This production date is after the current May 18, 2022 deadline for the *Fusion Elite* and *Jones* Plaintiffs to serve their opening expert reports. See Case 2:20-cv-02600-SHL-tmp, ECF No. 175. Chief Magistrate Judge Pham recognized that “the

¹ Chief Magistrate Judge Pham’s Order was in response to *Fusion Elite* Plaintiffs’ Subpoena to Rebel and subsequent July 9, 2021 Motion to Compel.

movants were diligent in filing the present motion against Rebel. However, any requests to extend the expert disclosure deadline would need to be raised through a separate motion.” (ECF 252 at 21). Magistrate Judge Pham also recognized that “[g]iven the significance of the issues in the action, the large amount in controversy, the difficulty in obtaining comparable sales data, and the centrality of the information to an entire subset of *Fusion Elite*’s claims, the undersigned finds that *Fusion Elite* has demonstrated that the requested transactional data is relevant and necessary” *Id.* at 19. In short, the Chief Magistrate Judge’s Order requires Rebel to produce its transactional apparel data after the deadline for submission of Plaintiffs’ expert reports, which reports will need to analyze that data. The foregoing constitutes extraordinary circumstances and provides further support for Plaintiffs’ Joint Extension Motion, which requests, *inter alia*, that the opening expert report deadline move from May 18, 2022 to June 27, 2022, but which does not alter any existing deadlines for filings with the Court.

Dated: April 28, 2022

Respectfully submitted,

By: /s/Victoria Sims

Jonathan W. Cuneo*

Victoria Sims*

CUNEON GILBERT & LADUCA LLP

4725 Wisconsin Avenue NW, Suite 200

Washington, DC 20016

Tel: (202) 789-3960

jorc@cuneolaw.com

vicky@cuneolaw.com

H. Laddie Montague, Jr.*

Eric L. Cramer*

Michael J. Kane*

Mark R. Suter*

BERGER MONTAGUE PC

1818 Market Street, Suite 3600

Philadelphia, PA 19106
Telephone: (215) 875-3000
hlmontague@bm.net
ecramer@bm.net
mkane@bm.net
msuter@bm.net

Karin E. Garvey*
Gregory S. Asciolla*
Veronica Bosco*
DICELLO LEVITT GUTZLER
One Grand Central Place
60 East 42nd Street, Suite 2400
New York, NY 10165
Tel: (646) 933-1000
kgarvey@dicellosevit.com
gasciolla@dicellosevit.com
vbosco@dicellosevit.com

* Admitted pro hac vice

*Interim Co-Lead Counsel for the Proposed
Direct Purchaser Class*

J. Gerard Stranch, IV (TN BPR #23045)
Benjamin A. Gastel (TN BPR #28699)
BRANSTETTER, STRANCH &
JENNINGS, PLLC
223 Rosa Parks Ave. Suite 200
Nashville, TN 37203
Telephone: (615) 254-8801
gerards@bsjfirm.com
beng@bsjfirm.com

*Liaison Counsel for Plaintiffs and the
Proposed Direct Purchaser Class*

Benjamin D. Elga*
JUSTICE CATALYST LAW, INC.
81 Prospect Street
Brooklyn, NY 11201
Tel: (518) 732-6703
belga@justicecatalyst.org

Roberta D. Liebenberg*
Jeffrey S. Istvan*
Mary L. Russell*
FINE KAPLAN AND BLACK, R.P.C
One South Broad St., 23rd Floor
Philadelphia PA 19107
Tel: (215) 567-6565
rliebenberg@finekaplan.com
jistvan@finekaplan.com
mrussell@finekaplan.com

Nathan A. Bicks (TN BPR #10903)
Frank B. Thacher III (TN BPR #23925)
BURCH, PORTER, & JOHNSON, PLLC
130 North Court Ave.
Memphis, TN 38103
Telephone: (901) 524-5000
nbicks@bpjlaw.com
fthacher@bpjlaw.com

Aubrey B. Harwell, Jr. (TN BPR #002559)
Charles Barrett (TN BPR #020627)
Aubrey B. Harwell III (TN BPR #017394)
NEAL & HARWELL, PLC
1201 Demonbreun St., Suite 1000
Nashville, TN 37203
Telephone: (615) 244-1713
aharwell@nealharwell.com
cbarrett@nealharwell.com
tharwell@nealharwell.com

*Additional Counsel for Plaintiffs and the
Proposed Direct Purchaser Class*

* Admitted pro hac vice

Joseph R. Saveri*
Steven N. Williams*
Ronnie Seidel Spiegel*+
Kevin E. Rayhill*
Elissa A. Buchanan*
David Seidel*
JOSEPH SAVERI LAW FIRM, LLP
601 California Street, Suite 1000
San Francisco, California 94108
Telephone: (415) 500-6800
Facsimile: (415) 395-9940
jsaveri@saverilawfirm.com
sWilliams@saverilawfirm.com
rspiegel@saverilawfirm.com
krayhill@saverilawfirm.com
eabuchanan@saverilawfirm.com
dseidel@saverilawfirm.com

Van Turner (TN Bar No. 22603)
BRUCE TURNER, PLLC
2650 Thousand Oaks Blvd., Suite 2325
Memphis, Tennessee 38118
Telephone: (901) 290-6610
Facsimile: (901) 290-6611
vturner@bruceturnerlaw.net

Richard M. Paul III*
Sean R. Cooper*
Ashlea Schwarz*
PAUL LLP
601 Walnut, Suite 300
Kansas City, Missouri 64106
Telephone: (816) 984-8100
rick@paulllp.com
sean@paulllp.com
ashlea@paulllp.com

Jason S. Hartley*
HARTLEY LLP
101 West Broadway, Suite 820
San Diego, CA 92101
Telephone: (619) 400-5822
hartley@hartleyllp.com

Daniel E. Gustafson*
Daniel C. Hedlund*
Daniel J. Nordin*
David A Goodwin*
Ling Shan Wang*
GUSTAFSON GLUEK PLLC
Canadian Pacific Plaza
120 South Sixth Street, Suite 2600
Minneapolis, MN 55402
Telephone: (612) 333-8844
Facsimile: (612) 339-6622
dgustafson@gustafsongluek.com
dhedlund@gustafsongluek.com
dnordin@gustafsongluek.com
dgoodwin@gustafsongluek.com
lwang@gustafsongluek.com

* Admitted pro hac vice

+Located in Washington State

*Attorneys in the Jones Action for Individual
and Representative Plaintiffs*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 28 2022, the foregoing was served via ECF processing upon the following:

Adam S. Baldridge
Matthew S. Mulqueen
BAKER DONELSON BEARMANN
CALDWELL & BERKOWITZ
165 Madison Ave Ste 2000
Memphis, TN 38103
Tel: 901-526-2000
abaldridge@bakerdonelson.com
mmulqueen@bakerdonelson.com

George S. Cary
Steven J. Kaiser
CLEARY GOTTLEB STEEN &
HAMILTON LLP
2112 Pennsylvania Avenue NW Ste 1000
Washington, DC 20037
Tel: 202-974-1500
gcary@cgsh.com
skaiser@cgsh.com

*Attorneys for Defendants Varsity Brands,
LLC; Varsity Spirit Fashions & Supplies, Inc.;
Varsity Spirit, LLC; Varsity Brands Holding
Co., Inc.; Varsity Intropia Tours, LLC; Bain
Capital Private Equity; Bain Capital, LP;
Charlesbank Capital Partners, LLC; BSN
Sports, LLC; Stanbury, LLC; and Herff
Jones, LLC;*

Grady M. Garrison
Nicole D. Berkowitz
BAKER DONELSON BEARMAN
CALDWELL & BERKOWITZ, P.C.
165 Madison Ave. Ste. 2000
Memphis, TN 38103
Tel: 901-526-2000
ggarrison@bakerdonelson.com
nberkowitz@bakerdonelson.com

*Attorneys for Defendant U.S. All Star
Federation, Inc.*

Paul Coggins
Brendan Gaffney
LOCKE LORD LLP
2200 Ross Avenue, Suite 2800
Dallas, TX 75201
pcoggins@lockelord.com
bgaffney@lockelord.com

Attorneys for Defendant Jeff Webb

s/Victoria Sims
Victoria Sims